

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-050203

10/16/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

ARIZONA STATE DEPARTMENT OF
REVENUE

DAVID J DIR

v.

DISCOUNT COPY SUPPLY INC, et al.

DAVID WM ENGELMAN

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Summary Judgment. No Response has been received.

A limited liability company, like any corporate entity, is itself incapable of performing any task. It cannot "remit" transaction privilege taxes; it cannot "collect, truthfully account for, and pay over" withholding taxes. Only a human actor, designated by the owners of the LLC's shares, can do so. The Court does not believe it is compelled to follow the holding in *In re Inselman*, 334 B.R. 267 (Bankr.D.Ariz. 2005). This Court concludes that the Arizona statutes, A.R.S. § 42-5028 and A.R.S. § 43-435, state with sufficient clarity that the person charged with collecting and remitting the tax on behalf of the corporation is civilly liable for his failure to perform.

Here, the State has shown that Defendant Mead was president of Discount Copy Supply. It was she to whom the tax forms were mailed, although they were completed by Elaine McBee, who is not identified in any filing. This is sufficient for a *prima facie* showing of Defendant's liability, shifting the burden of proof onto Defendant to demonstrate a genuine issue of material fact. Defendant has not filed a Response to the State's Motion for Summary Judgment. It is not sufficient to rest on the pleadings; Defendant must come forward with specific facts showing a

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genuine issue for trial. *Kelly v. NationsBank Mortgage Corp.*, 199 Ariz. 284, 287 ¶ 15 (App. 2000). As there are no genuine issues of disputed material fact,

IT IS ORDERED granting Plaintiff's Motion for Summary Judgment.